

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF CONFERES - CORPORATION TAX BUREAU

In the Matter of the Application of

SMARTCRAFT CORP.

For revision or refund of franchise
tax under Article 9-A of the Tax Law
for the fiscal year ended March 31,
1963.

Hearing Case No. 6515

On August 20, 1965 an assessment was issued against the taxpayer
as follows:

Assessment for the Fiscal Year ended March 31, 1963

Entire Net Income	\$487,676.54
Business allocation percentage	82.6038%
Taxable base	402,839.35
Tax at 5½%	\$ 22,156.17

The taxpayer had claimed a net operating loss deduction of \$398,403.97 representing carryforward of the entire net loss sustained for the fiscal year ended March 31, 1962. The Audit Unit disallowed the entire amount of the deduction because losses aggregating \$554,482.19 for the fiscal years ended March 31, 1958, March 31, 1959, March 31, 1960 and March 31, 1961 had been carried forward for Federal purposes. The Audit Unit also adjusted the business allocation percentage on an estimated basis because of taxpayer's failure to submit requested information.

Timely application for revision or refund was filed and an informal hearing was held in New York City on May 9, 1967 before J. J. Genevich. The taxpayer was represented by its president, Harry P. Schneider, and Henry Glasser, CPA, of Feinberg, Allen, Davis & Glasser, CPA's, 1450 Broadway, New York, N.Y. 10018.

The information on file disclosed that the taxpayer is a domestic corporation and is engaged in dress manufacturing. The raw material is cut in New York and then forwarded to contractors for sewing. The completed garments are shipped by the contractors to the Wilkes-Barre Warehousing Corporation. The merchandise is stored and shipped direct to customers from such location.

The taxpayer considered the warehouse as a permanent or continuous place of business and did not allocate to New York 50% of the shipments to customers located outside the state. Since the warehouse qualifies merely as a regular place of business, we are entitled to 50% of such shipments. The only permanent or continuous place of business of the corporation is the home office located in New York City.

The taxpayer is not entitled to claim a net operating loss deduction on its fiscal year ended March 31, 1963 return because losses of taxable years beginning prior to January 1, 1961 were carried forward for Federal purposes. Losses of such prior years must be absorbed first before the taxpayer can avail itself of the loss sustained for the fiscal year ended March 31, 1962. The law requires that the Federal and State net operating loss deductions must be in conformity.

For Federal purposes the taxpayer carried forward to the fiscal year ended March 31, 1964 \$113,733.58 of the loss sustained for the fiscal year ended March 31, 1962. Accordingly, we should allow a carryforward of the same amount to fiscal year ended March 31, 1964 to conform with Federal.

The assessment issued for the fiscal year ended March 31, 1963 based on an estimated business allocation percentage of 82.6038% should be corrected to reflect the proper business allocation percentage of 60.919%. This is the reason for the reduction in tax for that year.

Based on the foregoing, it is recommended that corrected assessments be issued as follows:

Corrected Assessment for Fiscal Year Ended 3/31/63

Entire Net Income	\$487,676.54
Business allocation percentage	60.919%
Taxable base	297,087.67
Tax at 5 1/2%	16,339.82
Tax previously assessed	22,156.17
Reduction in Tax	\$ 5,816.35

Corrected Assessment for Fiscal Year Ended 3/31/64

Entire Net Income	\$183,123.04
Less Investment Income	1,660.00
Business Income	181,463.04
Investment income	1,660.00
Less Net Operating Loss Deduction	<u>1,030.99</u>
Investment Income subject to allocation	629.01
Investment Income allocated at 100%	629.01
Business Income	181,468.04
Less Net Operating Loss Deduction	<u>112,702.59</u>
Business Income subject to allocation	68,760.45
Business Income allocated at 65.9347%	45,337.00
Taxable Base	45,366.01
Tax at 5 1/2%	2,528.13
Tax previously assessed	5,008.72
Reduction in Tax	\$ 2,480.59

/s/

W. F. SULLIVAN

Chairman

/s/

D. H. GILHOOLY

/s/

J. J. GENEVICH

JJG:MB
1/15/68

Approved
E. A. DORAN

Approved
A. B. MANLEY 1/26/68